

In the United States Court of Federal Claims

NOT FOR PUBLICATION

No. 06-699

(Filed January 5, 2007)

JAMAR JAMES EVANS, PRO SE,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

Jamar James Evans, pro se, Atwater, California.

Joan M. Stentiford, Department of Justice, Washington, D.C., with whom was *Assistant Attorney General Peter D. Keisler*, for Defendant. *David M. Cohen*, Director and *Steven J. Gillingham*, Assistant Director.

OPINION & ORDER

Futey, Judge.

This *pro se* case comes before the court on defendant United States' Motion For Summary Dismissal Of Pro Se Complaint. Defendant argues that plaintiff fails to articulate a claim within the United States Court of Federal Claims' ("USCFC") subject matter jurisdiction. Plaintiff claims that the Federal Bureau of Investigation ("FBI") breached a contract with him by not investigating his claims of civil rights violations by various state and federal agencies. Plaintiff seeks damages under the Federal Tort Claims Act § 1346(b)(1) ("FTCA") in the amount of \$372.1 trillion and costs. Defendant requests summary dismissal to avoid the need for parties to engage in unnecessary additional litigation.

Factual Background

On January 12, 2005, plaintiff contacted the FBI's Fresno branch attempting to act as an "informant" regarding a number of civil rights violations allegedly committed against him. Plaintiff claims that he reported infringement of his civil

rights by the United States Army, the Nevada Gaming Control Board, the Santa Clara County Department of Corrections, and his former employer to the branch office. Plaintiff avers that he presented documentation of the alleged transgressions to the FBI and was interviewed by a duty agent regarding his claims. Plaintiff also wrote to the Fresno branch office reiterating his claims on January 24, 2005. On March 2, 2005, the Special Agent in Charge of the Fresno branch responded by letter stating “[t]he Federal Bureau of Investigation (FBI) has no authority to conduct an investigation in the absence of an indication that a law within our investigative jurisdiction has been violated. Based on the information you have provided, both in the [January 24, 2005] letter and in a prior personal visit to the FBI’s Fresno Resident Agency, no such violation exists. Therefore, the FBI cannot be of assistance to you.”¹

Plaintiff subsequently wrote letters to the FBI’s San Francisco office and the FBI headquarters in Washington, D.C. In response, the FBI issued a letter on August 25, 2005 stating that “[t]he allegations that you have brought to our attention do not constitute a prosecutable violation. Therefore, we are unable to take any action regarding this matter. You may wish to seek private legal counsel regarding this matter.”²

Plaintiff maintains that “by denying his administrative claim of cited civil rights violations; the FBI has negligently breached a duty to plaintiff, has fostered an environment where the plaintiff is further injured or harmed or harassed, and is more likely to be subjected to further civil harassments as a result of his failed administrative claim with said agency.”³ Plaintiff initially filed this suit in California state court on July 15, 2005 and defendant removed the case to the Eastern District of California on December 8, 2005. In a decision dated March 9, 2006, the district court dismissed plaintiff’s claims, except for his contract claim, which was transferred to this court.

Discussion

“It is the practice of the courts generally to refuse to reopen what has been decided This principle provides that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case” *Hicks v. United States*, 23 Cl. Ct. 647, 652 (1991) (quoting *American Lifestyle Homes, Inc. v. United States*, 17 Cl. Ct. 711, 715 (1989)). “The

¹ *Complaint at Ex. 6.*

² *Id. at Ex. 3.*

³ *Id. at 7.*

‘law-of-the-case-doctrine’ would normally require this court to refrain from deciding the issue of jurisdiction contrary to the finding of the district court. However, this court is obligated to determine its own jurisdiction.” *Id.* (citing **Hambusch v. United States**, 857 F.2d 763 (Fed. Cir.1988), *cert. denied*, 490 U.S. 1054 (1989); **Diamond v. United States**, 228 Ct. Cl. 493, 657 F.2d 1194 (1981)).

In ruling on a motion to dismiss for lack of subject matter jurisdiction under RCFC 12(b)(1), the court must accept as true the complaint’s undisputed factual allegations and construe the facts in the light most favorable to plaintiff. **Papasan v. Allain**, 478 U.S. 265, 283 (1986); **Scheuer v. Rhodes**, 416 U.S. 232, 236 (1974); **Hamlet v. United States**, 873 F.2d 1414, 1416 (Fed. Cir. 1989); **Farmers Grain Co. v. United States**, 29 Fed. Cl. 684, 686 (1993). Plaintiff must make only a *prima facie* showing of jurisdictional facts through the submitted material in order to avoid defendant’s motion to dismiss. **Raymark Indus., Inc. v. United States**, 15 Cl. Ct. 334, 338 (1988) (citing **Data Disc., Inc. v. Syst. Tech. Assoc., Inc.**, 557 F.2d 1280, 1285 (9th Cir. 1977)). If the undisputed facts reveal any possible basis on which the non-moving party might prevail, the court must deny the motion. **Scheuer**, 416 U.S. at 236.

United States courts provide *pro se* plaintiffs more latitude in their pleadings, and do not hold them to the rigid standards and formalities imposed upon parties represented by counsel. **Estelle v. Gamble**, 429 U.S. 97, 106 (1976). Against this backdrop, this court liberally construes a *pro se* plaintiff’s complaint and holds it to “less stringent standards than formal pleadings drafted by lawyers . . .” *Id.* (quoting **Haines v. Kerner**, 404 U.S. 519, 520-21 (1972)). The court, however, cannot extend this leniency to permit complete abdication of any pleading requirements. **Demes v. United States**, 52 Fed. Cl. 365, 372 n.14 (2001) (“[A]lthough the plaintiff is proceeding *pro se*, he still has the burden of establishing jurisdiction.”) (citing **Sanders v. United States**, 252 F.3d 1329, 1333 (Fed. Cir. 2001)). Plaintiff must still “comply with the applicable rules of procedural and substantive law.” **Walsh v. United States**, 3 Cl. Ct. 539, 541 (1983) (citing **Faretta v. California**, 422 U.S. 806, 835 n.46 (1975)).

Plaintiff asserts that this action arises under the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, as well as the Tucker Act 28 U.S.C. § 1346(a)(2). Although this court is authorized to hear cases arising under the Tucker Act, “jurisdiction to hear tort claims is exclusively granted to the United States District Court under the Federal Tort Claims Act.” **McCauley v. United States**, 38 Fed. Cl. 250, 264 (1997), *aff’d*, 152 F.3d 948 (Fed. Cir. 1998), *cert. denied*, 525 U.S. 1032 (1998), *reh’g denied*, 525 U.S. 1173 (1999); *see also* 28 U.S.C. §1346(b); **Wood v. United States**, 961 F.2d 195, 197 (Fed. Cir. 1992) (“[D]istrict courts have . . . exclusive jurisdiction over tort claims for any amount if they fall within the Federal Tort Claims Act, §1346(b).”); **Martinez v. United States**, 26 Cl. Ct. 1471, 1476 (1992) (“The district

courts have exclusive jurisdiction in [Federal Tort Claims Act] actions.”), *aff’d*, 11 F.3d 1069 (Fed. Cir. 1993).

Plaintiff’s complaint does not contain any allegations that he formed a contract with the FBI. Moreover, his allegations that the FBI was negligent and breached a duty owed plaintiff and that he suffered emotional distress as a result are all tort claims. This court lacks jurisdiction over any cases sounding in tort. The Tucker Act limits its jurisdiction to “any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. §1491(a)(2) (2001). “[T]ort cases are outside the jurisdiction of the Court of Federal Claims[.]” *Keene v. United States*, 508 U.S. 200, 214 (1993); *see also Brown v. United States*, 105 F.3d 621, 623 (Fed. Cir. 1997); *Shearin v. United States*, 992 F.2d 1195, 1197 (Fed. Cir. 1993); *Whyte v. United States*, 59 Fed. Cl. 493, 497 (2004); *Cottrell v. United States*, 42 Fed. Cl. 144, 148 (1998). “If the government misconduct alleged was tortious, jurisdiction is not granted the Claims Court under the Tucker Act[.]” *New A. Shipbuilders v. United States*, 871 F.2d 1077, 1079 (Fed. Cir. 1989). “The language of the statutes which confer jurisdiction upon the Court of Claims, excludes by the strongest implication demands against the government founded on torts.” *Bigby v. United States*, 188 U.S. 400, 404 (1903) (quoting *Gibbons v. United States*, 75 U.S. 269, 275 (1868)). Therefore, this court does not have jurisdiction to hear plaintiff’s claim.

Conclusion

For the above-stated reasons, Defendant's Motion For Summary Dismissal Of Pro Se Complaint is ALLOWED. The Clerk of the Court is directed to enter a judgment in favor of defendant. No costs.

IT IS SO ORDERED.

BOHDAN A. FUTEY
Judge